

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 62001-1-I
Respondent,)	
)	
v.)	DIVISION ONE
)	
ALEXANDER CARLOS TORRICO,)	UNPUBLISHED AMENDED OPINION
)	
Appellant.)	FILED: June 8, 2009

PER CURIAM. Alexander Torrico appeals the sentence imposed following his guilty plea to one count of domestic violence felony violation of a court order and one count of second degree malicious mischief. He contends, and the State agrees, that the combination of 60 months confinement and 9 to 18 months of community custody exceeds the 60-month maximum sentence for his offense. Torrico contends we should remand for resentencing. The State agrees.

We recently held in State v. Linerud, 147 Wn. App. 944, 197 P.3d 1224 (2008) that when the combination of confinement and community custody exceeds the maximum sentence, the sentence is indeterminate and must be remanded for imposition of a determinate sentence not exceeding the statutory maximum. This is true even if the judgment and sentence recites that the total sentence shall not exceed the statutory maximum. Linerud, 147 Wn. App. at 949-51. Accordingly, we must remand for resentencing and for the court to exercise its discretion regarding the terms of confinement and community custody. Linerud, 147 Wn. App. at 951. We note that “[i]f the trial court wants to impose the maximum terms of confinement and community

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custody, it may do so under the second option in RCW 9.94A.715(1), which permits it to impose a term of community custody equal to the earned early release time.” Order Den. Mot. for Recons. And Amending Op. at 1, Linerud, No. 60769-3-I (Wash. Ct. App. Mar. 20, 2009), amendment to be published at Linerud, 147 Wn. App. at 950 at n.17.

Remanded for resentencing.

FOR THE COURT:

Jan, J.
Dwyer, A.C.J.
Grosse, J.